

## REMARKS

Applicants would like to thank the Examiner for withdrawing the finality of the previous Office Action and entering Applicants' last submission.

With this Amendment, independent claim 1 and dependent claims 4-5 have been amended to further clarify the invention. Claim 2 has been canceled. Claims 1 and 3-7 are currently pending in the instant application.

Claim 4 stands objected to because of an informality regarding a claim term. Claims 1-7 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claims 1-7 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out the subject matter of the invention. Claims 1 and 3 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,984,902 ("Moorehead"). Claims 2 and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Moorehead. Claims 5-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Moorehead and further in view of U.S. Patent 5,944,698 ("Fischer").

### Claim Objections

On page 2 of the Office Action, the Examiner objects to claim 4 because "base membrane" should be changed to "base member." With this Amendment, this change has been made. It is therefore respectfully requested that the Examiner withdraw this rejection.

### Claim Rejections Under 35 U.S.C. § 112, first paragraph

On page 2 of the Office Action, the Examiner rejected claims 1-7 under U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claim 2 has been canceled. The Examiner alleges that the seating portion which covers a minority of the surface

area of the lumen occluding portion in which the slit is disclosed as recited in the claims is not disclosed in the specification. Applicants respectfully traverse this rejection.

Applicants believe that the specification and drawings as filed more than adequately disclose this feature of an embodiment of the invention. Applicants point to Figs. 1 and 3 and to paragraphs 22, 26 and 30 of the application as published. Applicants believe that the subject matter was described in a way as to convey to one of skill in the art that the Applicants had possession of the claimed invention. It is adequately shown in Figs 1 and 3 that the seating portion covers a *minority* of a surface area of the lumen occluding portion in which the slit is disposed. In particular, Fig. 1 shows membrane seating portion 50 covering only a minority of the surface area of the lumen occluding portion. Based on Figs. 1 and 3 and paragraphs 22, 26 and 30, Applicants believe that one of ordinary skill in the relevant art would know that the seating portion 50 as disclosed and the slit 34 as disclosed, adequately represent that the seating portion covers only a minority of the surface area. Slit 34, when in the open position as shown in Fig. 1, in one embodiment opens to allow the contents to flow easily therethrough. One of ordinary skill in the art would understand this concept and elements as currently claimed.

From the foregoing, the Examiner's rejections under 35 U.S.C. § 112, first paragraph of claims 1 and 3-7 are believed to be overcome. It is, therefore, respectfully requested that the Examiner withdraw these rejections.

**Claim Rejections Under 35 U.S.C. § 112, second paragraph**

On page 3 of the Office Action, the Examiner rejected claims 1-7 under U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and claim the subject matter of the invention. Specifically, that the term minority has not been sufficiently defined.

For purposes of examination, the Examiner interprets the term minority to mean less than fifty percent. Claim 2 has been canceled. Applicants respectfully traverse this rejection.

As discussed above, Figs. 1 and 3 and paragraphs 22, 26 and 30 sufficiently disclose the subject matter being claimed, to one of ordinary skill in the art. Applicants believe that one of ordinary skill in the art would interpret the term minority as disclosed and claimed in the present application as less than fifty percent. Applicants believe this is sufficiently represented in the application as filed.

From the foregoing, the Examiner's rejections under 35 U.S.C. § 112, second paragraph of claims 1 and 3-7 are believed to be overcome. It is, therefore, respectfully requested that the Examiner withdraw these rejections.

#### **Claim Rejections Under 35 U.S.C. § 102(b)**

On page 2 of the Office Action, the Examiner rejected claims 1 and 3 under U.S.C. § 102(b) as being anticipated by Moorehead. Without conceding to the Examiner's assertions of anticipation, Applicant has amended independent claim 1.

Regarding independent claim 1, it is submitted that Moorehead does not anticipate the currently pending claims. "A claim is anticipated only if each and every element set forth in the claim is found, either expressly or inherently described in a single prior art reference." *See MPEP § 2131; Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

The Office Action alleges that Moorehead discloses a pressure activated valve of the present invention. It is respectfully submitted that Moorehead does not disclose such a valve.

Claim 1 has been amended to be directed, in part, to a pressure activated valve comprising a flow control membrane, wherein “the flow control membrane comprises a first membrane bonded to an annular base member, wherein an area of the base member substantially corresponds to that of a seating portion and wherein a slit extends through the first membrane, and wherein a thickness of the flow control membrane at the seating portion is greater than a thickness of a lumen occluding portion.”

The Office Action states that Moorehead discloses a pressure activated valve wherein a thickness of the flow control membrane at the seating portion is greater than a thickness of a lumen occluding portion, as is recited in currently amended claim 1. Applicants do not believe that Moorehead discloses such element.

The Examiner points to Fig. 3 of Moorehead as disclosing this element. However, no where in Moorehead is this element disclosed. Rather, in Fig. 3, Moorehead merely discloses a slit diaphragm contiguous at its periphery with surface 115. *See* Column 9, lines 64-67. No where in Moorehead is a pressure activated valve, wherein a thickness of the flow control membrane at the seating portion is greater than a thickness of a lumen occluding portion disclosed, as is recited in amended claim 1.

Moreover, because all of the limitations of the independent claim are not found in the references, the same holds true for the claims that depend therefrom.

From the foregoing, the Examiner’s rejections under 35 U.S.C. § 102(b) of claims 1 and 3 are believed to be overcome. It is, therefore, respectfully requested that the Examiner withdraw these rejections.

**Claim Rejections Under 35 U.S.C. § 103(a)**

On page 4 of the Office Action, the Examiner rejected claims 2 and 4-7 under U.S.C. §

103(a) as being unpatentable over Moorehead, in view of Fischer. With this Amendment, independent claim 1 and claims 4-5 have been amended. Claim 2 has been canceled. Claims 4-5 has been amended to clarify dependency.

With regard to the pending rejection of claims 4-7, each of these claims depend directly or indirectly from independent claim 1. Claim 1 has been amended to be directed, in part, to a pressure activated valve comprising a flow control membrane, wherein "the flow control membrane comprises a first membrane bonded to an annular base member, wherein an area of the base member substantially corresponds to that of a seating portion and wherein a slit extends through the first membrane, and wherein a thickness of the flow control membrane at the seating portion is greater than a thickness of a lumen occluding portion."

As discussed above, Moorehead fails to disclose such an element. It is respectfully submitted that the Fischer reference does not cure this deficiency. The Office Action has not stated, nor do the Applicants believe, that the Fischer reference discloses such an element.

Moreover, because all of the limitations of the independent claim are not found in the references, the same holds true for the claims that depend therefrom.

As a result, all of the elements of the claims are not found in the publications cited by the Examiner, and a *prima facie* case of obviousness has not been set forth for the currently amended claims.

In view of the foregoing, the Examiner's rejections under 35 U.S.C. § 103(a) of claims 4-7 are believed to be overcome. It is, therefore, respectfully requested that the Examiner withdraw this rejection.

### CONCLUSION

From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order and such action is respectfully requested.

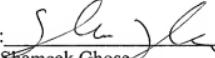
In the event that there are any questions relating to this Amendment or to the application in general, it would be appreciated if the Examiner would contact the undersigned attorney by telephone at (202) 373-6000 so that prosecution of the application may be expedited.

The Director is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 50-4047 (7061982001).

Respectfully submitted,

BINGHAM MCCUTCHEN, LLP

Date: February 22, 2010

By:   
Shameek Ghose  
Registration No. 61,802

BINGHAM MCCUTCHEN, LLP  
2020 K Street, NW  
Washington, DC 20006  
Telephone: (202) 373-6000  
Facsimile: (202) 373-6001